As for the sentence, the learned deputy public prosecutor had moved the court to enhance the punishment. I observe that the learned sessions court judge has not only been unusually fair in acquitting the appellant of two other related charges but he was also unduly lenient when inflicting the prescribed punishment. However, this act of compassion and sympathy by the learned sessions court judge was founded only on the sole consideration that the appellant was a first offender. In conceiving so he probably overlooked that in cases of corruption, particularly by a government servant, there is no question of an offender having a second bite at the cake.

I do not intend here to add to the long list of authorities on the gravity of corruption cases where the prescriptive punishment for the offence had been held to be a custodial sentence. However, like the learned sessions court judge, I am inclined to lean on the side of compassion not because this is his first offence but having regard to the loss of long service and his pension and gratuity. Nevertheless, a figure of $5,000 for a bribe of $2,500 is certainly too light a punishment. I will therefore enhance the figure of $5,000 to $7,500, in default 2 years' imprisonment.

Now turning back to the order of acquittal on the first two charges, the learned sessions court judge gave several unelaborated reasons for doing so. Essentially he was reluctant to act on the uncorroborated evidence of the complainant whom he had found to be incoherent and shifty in his evidence. The learned deputy public prosecutor argued that the learned sessions court judge should have nevertheless accepted this witness's evidence as not being inherently incredible and called for the defence. Having read the notes of evidence as recorded, I find myself not only entirely in agreement with the trial judges' findings, but also in the course of such perusal, I came across the confirmatory evidence which gave rise to his doubts. Even with the use of an aid memo, admitted in evidence in the form of his personal diary, the complainant faltered in his evidence and on one occasion had to correct his earlier testimony. However, the most crucial reason, which incidentally was not taken up by the defence, is that a person simply referred to as Ah Ming whom the complainant insisted was present with him on both occasions and therefore had heard and witnessed the transactions involving both charges was neither called or offerred to the defence. The question whether evidence is inherently incredible or not is a question of fact and in this case I think the learned sessions court judge had every reason to hold it positively so. I therefore dismiss the cross appeal against acquittal on the first and second charges.

Appeal dismissed.

Solicitors: *Fernandez & Co.*

Reported by *Zarinah Marican*

Teh Hock Seng v Minister of Home Affairs & Anor

HIGH COURT (PENANG) — CRIMINAL APPLICATION NO 44-52-90
ABDUL HAMID JC
25 MAY 1990

Preventive Detention — Confirmation of detention by Yang di-Pertuan Agung — Whether must be made within reasonable time — Procedural requirement for Yang di-Pertuan Agung to give directions to minister — Dangerous Drugs (Special Preventive Measures) Act 1985, ss 10(2) & 11C(1)

Pursuant to a detention order made under s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985, the applicant was ordered to be detained for two years from 31 May 1988. The applicant made representations to the Advisory Board in June 1988 and in August the Board heard these representations. On 2 September 1989, the Board made its recommendations to the Yang di-Pertuan Agung, who then 'confirmed' the detention order as provided by s 10(2) of the Act. The applicant sought habeas corpus on the ground that the confirmation was not made within a reasonable time. There was no indication in the affidavits filed on behalf of the respondents as to when such confirmation was given.

Held, dismissing the application:

The two procedural requirements provided by s 10 of the Act have been complied with. Subsection 2 of s 10, which provides for the Yang di-Pertuan Agung to give directions to the minister, as he thinks fit, does not lay down any procedural requirement as to how or when the direction is to or should be made. The question of non-compliance does not arise. It is not a procedural requirement in the Act that the direction, if given, must be given within a reasonable time.

Case referred to

1 *Rajoo s/o Ramasamy* v *Inspector General of Police & Ors* [1990] 1 MLJ 430 (refd)

Legislation referred to

Dangerous Drugs (Special Preventive Measures) Act 1985 ss 10(2), 11C(1)
Interpretation Act 1948 and 1967 (Act 380) s 54(2)

Karpal Singh for the applicant.
Noorbahari bin Baharuddin (Federal Counsel) for the respondents.

Cur Adv Vult

Abdul Hamid JC: The applicant was arrested and detained under s 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (Act 316) on 2 April 1988. On 27 May 1988 the Deputy Minister of Home Affairs made the detention order pursuant to s 6(1) of the Act ordering the applicant to be detained for two years from 31 May 1988. On 9 June 1988 the Advisory Board received the representations made by the applicant under s 9(1) of the Act. The Advisory Board heard the representations on 24 August 1988. On 2 September the Advisory Board made its recommendations to the Yang di-Pertuan Agung. The Yang di-Pertuan Agung 'confirmed' the detention order as provided by s 10(2) of the Act. However, there is

no indication in the affidavits filed on behalf of the respondents as to when such confirmation was given. Paragraph 3 of the affidavit of Cik Zainab bte Saad, the secretary of the Advisory Board says:

> Pursuant to the recommendations of the Advisory Board the Yang di-Pertuan Agung has confirmed the detention order made by the minister under s 6(1) of the Act against the applicant.

Mr Karpal Singh, for the applicant, raised only one issue. He argued that by virtue of s 54(2) of the Interpretation Act 1948 and 1967 (Act 388), the confirmation must be given within a reasonable time. He said that there was nothing in the affidavits filed on behalf of the respondents to indicate when the Yang di-Pertuan Agung made the confirmation. Therefore it could not be said that confirmation was made within a reasonable time.

Section 11C(1) of the Act provides:

> There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or decision made by the Yang di-Pertuan Agung or the Minister in the exercise of their discretionary power in accordance with this Act, save in regard to any question on compliance with any procedural requirement in this Act governing such act or decision.

The relevant provision of the Act in this respect is s 10. As far as I can see there are only two procedural requirements provided by s 10. They are:

(1) when representations are received, the Advisory Board is required to consider the representations within three months or such longer period as the Yang di-Pertuan Agung may allow;
(2) the Advisory Board is required to make recommendations to the Yang di-Pertuan Agung.

These were complied with.

Subsection (2) provides for the Yang di-Pertuan Agung to give directions to the minister, if any, as he thinks fit. The section, or for that matter the Act, does not lay down any procedural requirement as to how or when the direction is to or should made. Therefore the question of non-compliance does not arise. In other words, considering the clear words of s 11C(1) it is, in my view, not a procedural requirement in the Act that the direction, if given, must be given within a reasonable time. On that ground alone the application fails.

Mr Karpal Singh drew my attention to the case of *Rajoo s/o Ramasamy* v *Inspector General of Police & Ors.*[1] One of the grounds relied on in that case is similar to the ground relied on in this case. In that case, as in this case, it was 'not clear' when the direction was made by the Yang di-Pertuan Agung. Edgar Joseph Jr J agreed that the 'decision of the yang di-Pertuan Agung under s 10(2) of the Act agreeing with the recommendations of the Advisory Board must be made within a reasonable time.' But, considering the circumstances of the case, he could not accept that there had been no compliance with that requirement. Appeal to the Supreme Court was allowed on a different issue. So the question is still open for this court to decide.

The application is dismissed.

Application dismissed.

Solicitors: *Karpal Singh & Co.*

Reported by *Zarinah Marican*